IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLN.NO.6729 OF 2005
(LEAVE TO APEPAL)
IN
CRI.APPEAL NO. OF 2005

The State of Maharashtra ..Applicant

Vs.

Shri.Kishor Nanji Vithalani
and Ors. ..Respondents

...

Ms.S.V.Gajare A.P.P. for the Applicant-State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : FEBRUARY 27, 2007

P.C.

1. Heard the learned A.P.P. for the Applicant-State.

2. The State has preferred this application for leave to appeal against the judgment and order dated 7.3.2005 passed by the learned Judicial Magistrate F.C. Khalapur in R.C.C.No. 72 of 2002. By the said judgment and order, the learned Magistrate acquitted the respondents of the offences under section 7(i) r.w. Section 2(ia)(a), 2(ia) (m) punishable under Sections 16 and 17 of the Prevention of Food Adulteration Act, 1954.

3. I have perused the judgment and order and the evidence which has been produced by the learned A.P.P. It is the prosecution case that on 16.8.2001 the complainant along with panch witnesses visited the shop of K.K.Brothers. The complainant took sample of gram flour. It is the case of the prosecution that the said gram flour was adulterated with watana flour. Hence, the respondent-accused came to be prosecuted. The learned Magistrate has acquitted the accused persons on many grounds. One of the grounds is that Section 13(2) of the Prevention of Food Adulteration Act, was not complied with. Moreover, there is no material to show that the sample was injurious to health. The Public Analyst Mrs. Aparna was examined. According to her, the sample was not injurious to health. Moreover, the percentage of Watana starch in the sample is not mentioned anywhere. In the absence of percentage of Watana starch in the gram flour, it is difficult to hold that the sample was not as per the standard prescribed under the Prevention of Food Adulteration Act. It is seen that the accused had not made any representation in respect of the

substance or quality of the samples. The prosecution has failed to show whether the constituents found in the sample were not within the prescribed limits of variability. The learned Magistrate acquitted the respondent on the above grounds as well as some other grounds. Looking to the evidence on record, I am of the opinion that the view taken by the learned Special Judge is a reasonable and possible view.

4. It is well settled that if the view of acquittal could have been reasonably arrived at then the mere circumstance that the appellate Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I am referring to only two of them i.e. **AIR 1971 S.C. 66 Khedu Mohton and Ors. Vs. State of Bihar and C. Anthony Vs. K.G.Raghavan Nair (2003) 1 SCC 1.** In the case of **C.Anthony**, the Supreme Court has observed that unless the findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on

record. As stated earlier, the view taken by the learned Magistrate is a reasonable and possible view, hence, no interference is called for.

5. In this view of the matter, application for leave to appeal is rejected.

[V.K.Tahilramani, J.]